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Complaints Examination
& Legal Administration
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of People for Pearce, James Francis, in his capacity as Treasurer of People for Pearce, and Representative Stevan Pearce in MUR 6753

Dear Mr. Jordan,

This Response is submitted by the undersigned counsel on behalf of People for Pearce, James Francis, in his capacity as Treasurer of People for Pearce, and Representative Stevan Pearce ("Respondents") in response to the Complaint designated Matter Under Review 6753. For the reasons set forth below the Commission should find no reason to believe that any Respondent violated the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") or any Commission regulation, and dismiss the Complaint.

The Complainant makes two related allegations. First, Complainant alleges that Respondent Representative Stevan Pearce, though his principal campaign committee People for Pearce, "directly or indirectly established, financed, maintained or controlled" GOAL WestPAC, an independent expenditure-only committee. Second, Complainant alleges that GOAL WestPAC impermissibly accepted a corporate contribution when it was an entity established, financed, maintained, or controlled by Respondent federal candidate and officeholder, with the result being a violation of 2 U.S.C. § 441i(e) by the Respondent candidate and officeholder. Both allegations are incorrect as a matter of law, for the reasons set forth below.

I. Respondents Did Not Establish, Finance, Maintain, or Control GOAL WestPAC

As noted above, Complainant's first allegation is that "Representative Pearce, through his principal campaign committee PFP, "financed" WestPAC." On January 17, 2013, Respondent People for Pearce made two contributions totaling $10,000 to GOAL WestPAC. This $10,000 contribution was entirely legal and permissible.

A. Factual Background

Respondent People for Pearce made the above referenced $10,000 contribution to GOAL WestPAC following a discussion between Jason Heffley, Founder of GOAL WestPAC, and Dan Hazelwood, a general consultant to People for Pearce. *See* Affidavit of Dan Hazelwood at ¶ 3-7.

During this discussion, Mr. Heffley told Mr. Hazelwood and People for Pearce that GOAL WestPAC had prepared an initial budget, had already received several funding commitments, and had prepared a proposed budget of over $1 million. *See id.* at ¶ 6. Mr. Hazelwood attests that Mr. Heffley told him that GOAL WestPAC intended to solicit contributions from many other potential contributors. *Id.* Mr. Heffley represented GOAL WestPAC to Respondents as a "SuperPAC" with the mission of furthering conservative principals and supporting conservative candidates. *See id.* at ¶ 3. At the time Respondent People for Pearce made the above-referenced contribution to GOAL WestPAC, Respondents were not aware, and had no reason to believe, that its contribution would be the first contribution received by GOAL WestPAC. *See id.* at ¶ 8.

Respondents People for Pearce, James Francis, and Representative Stevan Pearce had no role in the conception, establishment, or organization of GOAL WestPAC. GOAL WestPAC was not the "idea" of any Respondent, and no Respondent assisted Mr. Heffley or any other person in constructing GOAL WestPAC. Complainant alleges that Representative Pearce's brother, Phillip Pearce, is GOAL WestPAC's Treasurer. Phillip Pearce is listed as GOAL WestPAC's treasurer on the organization's Statement of Organization. In addition, Phillip Pearce acts as a bookkeeper for People for Pearce. Phillip Pearce is an accountant by profession and as People for Pearce's bookkeeper, he does not have decision-making authority within the committee.

In light of these facts, and the representations made by Mr. Heffley to Mr. Hazelwood and People for Pearce, Respondents had no reason to think that a modest contribution of $10,000 to GOAL WestPAC was anything but entirely legal and permissible.

As GOAL WestPAC's FEC reports attest, the organization's planned activity never came to fruition, and the PAC raised substantially less than initially expected. GOAL WestPAC's

2013 mid-year report shows that it spent virtually all of its $15,000 raised on accounting and legal expenses. GOAL WestPAC did not report any "programmatic" expenses. Simply put, Respondent's contributions did not serve as "seed money," and aside from making the two contributions noted above, Respondents had no further involvement with GOAL WestPAC until August 2013 when Respondents requested, and later received, a refund of the full $10,000 contribution amount.

B. Legal Discussion

A review of applicable Commission regulations and precedent demonstrate that the Respondent's did not "establish, finance, maintain, or control" GOAL WestPAC for purposes of 2 U.S.C. § 441i(e).

1. Regulatory Standard

The terms "establish, finance, maintain, or control" are not individually defined. Instead, FEC regulations define the phrase "*establish, finance, maintain, or control*" at 11 C.F.R. § 300.2(c), which sets forth ten factors to be "examined in the context of the overall relationship between sponsor and the entity."[1] The ten factors listed in the regulation are not exclusive. See 11 C.F.R. § 300.2(c)(2) ("Such factors include, but are not limited to...."). As noted in the Explanation and Justification, "[t]he phrase 'established, financed, maintained, or controlled,' without the modifier 'directly or indirectly,' was already used in the anti-proliferation provisions of the FECA and in the Commission's 'affiliation' regulation. *See* 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g), and 110.3." Final Rule on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,083 (July 29, 2002). In 2002, the Commission applied the same standard to "establish, finance, maintain, or control" as the phrase is used in 2 U.S.C. § 441i. *See id.* at 49,084 ("The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA."). In other words, to ask if an entity is "established, financed, maintained, or controlled" by a federal officeholder or candidate is to ask if the two entities are affiliated. In the present matter, Respondents and GOAL WestPAC are very obviously not "affiliated" with one another.

Factors 1, 2, and 3 at 11 C.F.R. §300.2(c)(2) address the term "control." The Complainant does not allege, or otherwise provide any facts suggesting, that Respondent in any way "controls" GOAL WestPAC through any of the means set forth in Factors 1, 2, and 3. And in fact, Respondent did not, and does not, exercise any direction or control over GOAL WestPAC's activities, funds, and spending decisions. Respondents do not own a controlling interest in the voting stocks or securities of GOAL WestPAC. Respondents do not have the

[1] A "sponsor" includes federal candidates and officeholders. 11 C.F.R. §300.2(c)(1).

authority or ability to direct or participate in the governance of GOAL WestPAC through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures. Respondents do not have the authority to hire, appoint, demote, or otherwise control the officers or other decision-making employees or members of GOAL WestPAC.

Factors 4, 5, and 6 at 11 C.F.R. §300.2(c)(2) address "control" and "maintenance" through common and overlapping personnel. Complainant alleges that GOAL WestPAC "is run by Jason Heffley, Representative Pearce's former deputy chief of staff and campaign manager." Even if true, this relationship is not one of the instances of "common and overlapping" personnel addressed in Factors 4, 5, and 6. Respondents' subsequent communications with Mr. Heffley about GOAL WestPAC have been limited to a phone call upon learning of the complaint in this Matter Under Review.

Complainant also alleges that Representative Pearce's brother, Phillip Pearce, is GOAL WestPAC's Treasurer. Phillip Pearce is GOAL WestPAC's Treasurer, and he also provides accounting services to People for Pearce as the committee's bookkeeper. Phillip Pearce's position and job description with People for Pearce is ministerial and limited to maintaining financial records, and does not involve making decisions pertaining to the committee's strategy, fundraising, or communications. As it has done in the past, the Commission should continue to decline to presume a lack of independence based solely on a familial relationship. Accordingly, Respondents and GOAL WestPAC do not have common or overlapping membership, officers, or employees that would indicate a formal or ongoing relationship. Respondents do not have any members, officer, or employees who were members, officers, or employees of GOAL West PAC, or vice versa, that may be indicative of the creation of a successor entity.

Factor 9 addresses the question of "establishment," namely, whether a sponsor had an active or significant role in the formation of the entity. As explained above, Respondents had no role in the creation, formation, development, or organization of GOAL WestPAC. GOAL WestPAC was created, formed, organized, and developed independently of Respondents.

"Financing" is addressed in Factors 7, 8, and 10. Factors 7 and 8 ask whether a sponsor "provides funds or goods in a significant amount or on an ongoing basis to the entity," or "causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity." There is no allegation, and the facts do not suggest, that Respondents provided funding to GOAL WestPAC "on an ongoing basis." Rather, the Complainant alleges that the $10,000 contribution made by Respondent People for Pearce to GOAL WestPAC constituted a "significant amount" of funds. The term "significant amount" is not defined in the Act or Commission regulations. It is a completely subjective term for which the Commission provides no guidance. In an environment in which campaign committees and PACs routinely spend hundreds of millions of

dollars each, however, the notion that $10,000 is a "significant amount" to a Super PAC, even a nascent one, seems far-fetched.

The contributions at issue in this matter do not constitute a "significant amount" of funding. On its face, $10,000 is not a "significant amount" for purposes of 11 C.F.R. §300.2(c)(2)(vii) and (viii). However, even if the Commission treats the contribution at issue as a "significant amount" in the context of the present matter, the presence of one factor out of ten, "in the context of the overall relationship between sponsor and the entity," still does not permit the conclusion that GOAL WestPAC was "established, financed, maintained or controlled" by Respondents.

2. Advisory Opinion 2006-04 (Tancredo)

Complainant relies primarily on Advisory Opinion 2006-04 (Tancredo) to support its allegations. As explained in more detail below, Commission regulations and existing enforcement precedent did not support the approach taken in Advisory Opinion 2006-04, and subsequently, Commission enforcement proceedings appear to ignore Advisory Opinion 2006-04. In short, Advisory Opinion 2006-04 was anomalous when it was issued, and has not been followed since.

Advisory Opinion 2006-04 also presented a very different set of facts than are at issue in this matter. In the Advisory Opinion Request, Congressman Tancredo represented that he "did not establish and will not control" a certain state ballot initiative committee. At the same time, however, Congressman Tancredo indicated that he intended to have an ongoing relationship with that ballot committee, including endorsing the position advanced by the ballot committee, receiving polling data from the ballot committee, and using that polling data to craft messages. The Request then asked if Congressman Tancredo's principal campaign committee could "donate either $50,000 or 50% of the total receipts of [the ballot committee] at the time of the contribution, whichever is less." Alternatively, the committee proposed donating either $50,000 or 25 % of the total receipts of the ballot committee, whichever is less.

a. *Tancredo* Was Improperly Considered

With all due respect to the Commission, Advisory Opinion 2006-04 was not properly considered. The Commission addressed the requestor's specific question of whether certain proposed contributions to the ballot committee would constitute "financing" – but failed to recognize that this narrow question is largely irrelevant in light of Commission regulations. The appropriate legal question was whether Congressman Tancredo's principal campaign committee would "*establish, finance, maintain, or control*" the ballot committee, as that phrase is defined at 11 C.F.R. § 300.2(c)(2), which requires consideration of ten factors that are to be "examined in

the context of the overall relationship between sponsor and the entity to determine whether the presence of any factor or factors is evidence that the sponsor directly or indirectly established, finances, maintains, or controls the entity." The Requestor's two proposed contributions were certainly a relevant part to the question presented, but the Commission's regulation does not (properly) permit a conclusion to be drawn on that basis alone.

The Commission did not perform the analysis required under 11 C.F.R. § 300.2(c)(2) – partly because it lacked the information necessary to do so. The Commission explained in the footnote "that while other factors may also indicate that [the ballot committee] is directly or indirectly established, financed, maintained, or controlled by Representative Tancredo, your request does not provide sufficient information for the Commission to apply these factors in the context of this Advisory Opinion." Advisory Opinion 2006-04 at 3 fn. 1. Upon this realization, the Commission *should have* sought this additional information, or advised the requestor that it lacked sufficient information to render an advisory opinion.

Instead, however, the Commission issued a response that was almost completely divorced from its own regulation, which requires that a determination of "established, financed, maintained, or controlled" be based upon a consideration of ten factors "examined in the context of the overall relationship between sponsor and the entity." *See* Dissenting Opinion of Chairman Toner and Commissioner von Spakovsky in Advisory Opinion 2006-04 ("the majority opinion contains no examination of the relevant facts and circumstances"). The majority considered only the matter of the proposed contributions, and incorrectly presumed (or failed to question the requestor's presumption) that answering this question was sufficient to determine whether the entity was "established, financed, maintained, or controlled" by the requestor.

In doing so, the Commission appears to have presumed that the individual terms within the phrase "established, financed, maintained, or controlled" have independent legal meanings, may be considered and applied separately, and that satisfying of any one of the four terms – using criteria and standards that are not set forth in either the Act or Commission regulations – is sufficient to making a finding under 2 U.S.C. § 441i(e). However, the Commission rejected this approach in 2002 when it adopted a definitional regulation in which the four words "establish," "finance," "maintain," and "control" do not have independent meanings and applications for purposes of 2 U.S.C. § 441i(e). As explained above, the Commission determined that the entire four-word phrase "*establish, finance, maintain, or control*" is simply a synonym for "affiliation." Under the Commission's own regulations, the question of whether one entity "financed" another has no legal consequence in and of itself. What matters is whether one entity "*established, financed, maintained, or controlled*" another entity, as that entire phrase is defined at 11 C.F.R. §300.2(c).

b. Advisory Opinion 2006-04, 50% Proposal

With respect to the first proposal considered in Advisory Opinion 2006-04 – a contribution of the lesser of 50% of the ballot committee's total receipts, or $50,000 – the Commission addresses only Factor 7 at 11 C.F.R. §300.2(c)(2) ("whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity"). The Commission concluded that "a donation by [the principal campaign committee] that represents 50% of [the ballot committee's] total funds is a 'significant amount' that would result in [the principal campaign committee] 'financing' [the ballot committee] for the purpose of 11 CFR 300.2(c)." No other factors were addressed in reaching this conclusion. Based on the Advisory Opinion Request, this contribution would be somewhere between approximately $4,600 and $50,000.[2]

To the extent that Advisory Opinion 2006-04 can be read as establishing a *per se* rule that "[a] donation of 50% of an organization's total receipts must be considered a 'significant amount,'" we note that the Advisory Opinion itself acknowledges that the Commission does not utilize a *per se* approach. *See* Advisory Opinion 2006-04 ("The Commission has approached the question of what constitutes a significant amount on a case-by-case basis in view of all the relevant circumstances."). Two Commissioners specifically rejected the majority's apparent *per se* approach, for the very simple reason that "11 CFR §300.2(c) does not impose any *per se* thresholds, but rather, requires a full examination of the relevant facts." Dissenting Opinion of Chairman Toner and Commissioner von Spakovsky in Advisory Opinion 2006-04. In addition, one of the four Commissioners who voted to approve Advisory Opinion 2006-04 had, two years earlier, rejected a "specific threshold" approach. See discussion of MUR 5343, *infra* on pages 10-11. Under 11 C.F.R. § 300.2(c)(2)(vii), Respondent's contribution of $10,000 must be evaluated in light of all the relevant facts before the Commission may conclude that $10,000 is, as a matter of law, a "significant amount." A simplistic approach that looks only at percentages inevitably leads to absurd results when small amounts are at issue. Finally, Commission regulations "trump" an inconsistent Advisory Opinion.

Even if the Commission ultimately concludes that $10,000 is a "significant amount," that conclusion means only that Factor 7 is satisfied. In and of itself, this *does not* lead to a conclusion that Respondents "established financed maintained, or controlled" GOAL WestPAC under the full facts and circumstances test set forth at 11 C.F.R. §300.2(c)(2) because all of the remaining facts and circumstances indicate that Respondents had no involvement in the activities of GOAL WestPAC.

c. Advisory Opinion 2006-04, 25% Proposal

[2] Advisory Opinion 2006-04 indicates that the ballot committee raised $9,285 through the fourth quarter. The ballot committee also had "pledges" for an additional $45,500.

With respect to the second proposal considered in Advisory Opinion 2006-04 – a contribution of the lesser of 25% of the ballot committee's total receipts, or $50,000 – the Commission took note of a number of other contextual facts,[3] and concluded that "in the context of the overall relationship between [the principal campaign committee] and [the ballot committee], the Commission concludes that the donation of 25% of the [ballot committee's] total receipts by [the principal campaign committee] is a significant amount of funds that would result in [the principal campaign committee] 'financing' [the ballot committee] for the purpose of 11 CFR 300.2(c)."[4] (In this instance, the proposed contribution would total between approximately $2,300 and $50,000.)

The Commission's conclusion is stated in a way that is completely inconsistent with the definitional regulation set forth at 11 C.F.R. §300.2(c)(2). The regulatory standard does not define the phrase "significant amount" by reference to the various factors at 11 C.F.R. § 300.2(c)(2). Rather, the various factors provide a framework for examining whether one person or organization "*established, financed, maintained, or controlled*" another entity, and providing a "significant amount" of funding is one consideration that is relevant to that broader question.

While badly misconstruing the regulatory standard, it appears that the majority in Advisory Opinion 2006-04 did not apply a *per se* rule with respect to the requestor's 25% proposal. The Commission does not explain why a *per se* rule is appropriate in certain circumstances but not in others. In any event, the Commission relied on a number of facts, which purportedly described "the context of the overall relationship," and concluded that in that context, a contribution of 25% of the recipient committee's total funds (between approximately $2,300 and $50,000) "is a significant amount."

Again, even if the Commission ultimately concludes that $10,000 is a "significant amount," that conclusion means only that Factor 7 is satisfied. In and of itself, this *does not* lead

[3] The Commission observed that "DCN [the ballot committee] will also share with TFC [the principal campaign committee] both its polling data and general 'campaign strategy.' Representative Tancredo intends to use his own campaign funds to create and distribute advertisements to endorse the initiative. He supported an identical initiative in the past and is closely identified with this issue on a State-wide and national basis. Representative Tancredo will appear on the same ballot as the initiative and has made the issue of immigration reform a part of his reelection campaign." Advisory Opinion 2006-04.

[4] We note that the facts upon which the Commission relied to evaluate the "overall relationship" between the two entities are the same facts that the Commission believed provided it with insufficient information to apply the other factors at 11 CFR § 300.2(c)(2). See Advisory Opinion 2006-04, fn. 1 ("The Commission notes that while other factors may also indicate that DCN is directly or indirectly established, financed, maintained, or controlled by Representative Tancredo, your request does not provide sufficient information for the Commission to apply these factors in the context of this Advisory Opinion.").

to a conclusion that Respondents "established financed maintained, or controlled" GOAL WestPAC under the full facts and circumstances test set forth at 11 C.F.R. §300.2(c)(2) because all of the remaining facts and circumstances indicate that Respondents had no involvement in the activities of GOAL WestPAC. In particular, the close relationship between Representative Tancredo and the ballot committee (which existed to promote Representative Tancredo's signature issue, *see supra* footnote 3) that played a significant role in the consideration of Advisory Opinion 2006-04 is not present in this matter.

3. The Commission Has Never Used The *Tancredo* Approach in Enforcement Matters, Either Before or After Issuing *Tancredo*

The analytical approach taken in Advisory Opinion 2006-04 appears to be unique to that matter, and could be attributed to the unique facts presented. Both before and after Advisory Opinion 2006-04 was issued, in March 2006, the Commission approached the question of establish, finance, maintain, and control in a manner that is consistent with 11 C.F.R. § 300.2(c) and its required multi-factor, facts and circumstances test.

a. Pre-*Tancredo* Enforcement Matters: MURs 5338, 5343, and 5367

In 2003, in a very early challenge brought under the new BCRA regulations, the Commission considered whether the Leadership Forum and the Democratic State Parties Organization were "directly or indirectly established, financed, maintained, or controlled" by the National Republican Congressional Committee and the Democratic National Committee, respectively. *See* MUR 5338 (Leadership Forum/Democratic State Parties Organization). The Commission voted to 4-2 to accept the recommendations and reasoning of the First General Counsel's Report, which concluded that neither entity was established, financed maintained or controlled by one of the national party committees.

The First General Counsel's Report in MUR 5338 contains an extensive review of various factors under 11 C.F.R. § 300.2(c)(2). With respect to the Leadership Forum and the NRCC, the Report emphasizes "evidence of the NRCC's role in the establishment of the Forum," "the impact of the $1 million donation and its return," and "the nature of the relationships between persons associated with the Forum, the NRCC, and the House Republican leadership." *See* First General Counsel's Report in MUR 5338 at 11-19. The report indicates that a "single donation may not by itself show that the donor 'established, financed, maintained or controlled' the recipient within the meaning of 2 U.S.C. § 441i(a)" *Id.* at 13. On the other hand, "$1 million is facially a significant amount." *Id.* at 14.

The First General Counsel's Report also explains that a donation must actually be used as "seed money" in order to "retain[] its character as 'seed money.'" *Id.* at 15 ("Had any of the

NRCC's $ 1 million been spent; had it been pledged as collateral for a loan; or even had the Forum raised other funds prior to December 24, the $1 million would have, to at least some degree, retained its character as 'seed money.'"). As noted above, the $10,000 contribution at issue in the present matter was not spent as "seed money," but rather, on legal and accounting expenses that were not in furtherance of any programmatic activities. The First General Counsel's Report concludes that "[v]iewed in this context, the transfer and return of the $1 million during the BCRA transition period while the Forum engaged in no other financial activity does not by itself establish the Forum was 'financed' by the NRCC for purpose[s] of 2 U.S.C. § 441(i)." *Id.* at 16. It is readily apparent that no *per se* rule was used here.

Finally, in concluding that the Leadership Forum was not "established, financed, maintained, or controlled" by the NRCC, the First General Counsel's Report explained that "[t]here does not appear to be any evidence that either NRCC or the House Republican leadership has formal authority to direct or participate in the Forum's governance." *Id.* at 17. Furthermore, "something more than the mere fact of such informal, ongoing relationships between the personnel of a potentially sponsoring and potentially sponsored entity is necessary to support a conclusion of 'establishment, financing, maintenance, or control.'" *Id.* at 18. The First General Counsel's Report even explained in a footnote that

> In politics, many people change jobs fairly frequently and maintain a network of connections with former employers and colleagues. Many, if not most, persons involved in so-called '527' organizations will have connections similar to those in this case. If the mere existence of such professional ties were sufficient to support a finding of establishment, financing, maintenance, or control, then almost every '527' group would be subject to Section 441i, or at least to an investigation to determine whether it was subject to Section 441i.

Id. at 18 fn. 23.

Similarly, in MUR 5343 (Democratic Senator Majority Fund et al), which had been severed from MUR 5338, the First General Counsel's Report once again engaged in a broad analysis of funding, contributor overlap, and overlapping personnel. *See* First General Counsel's Report in MUR 5343 at 10-12, 15-17. The Commission voted 5-1 to accept OGC's recommendations, which included no findings that any entity established, financed, maintained, or controlled another.

Also of note in MUR 5343 is the separate statement of Commissioner Mason, one of the four Commissioners who voted in favor of Advisory Opinion 2006-04. In MUR 5343, Commissioner Mason rejected a "specific threshold" approach to considering the question of establish, finance, maintain, or control. Specifically, Commissioner Mason wrote:

> [E]vidence that an officeholder or group of officeholders is responsible for raising substantial portions of an organization's funds could be considered evidence of "financing" of the organization by the officeholder(s). This analysis does not rely on a specific threshold, but is applied like other in our 'established, financed, maintained, or controlled' analysis in the context of the overall relationship between the officeholder(s) and the organization. For instance, regarding the same organization, the FGCR considers the fact that there is a 70% overlap between donors to this group and donors to the DSCC, but concludes in the particular circumstances here that this overlap does nto conclusively show common control and is not worthy of further investigation. See FGCR at 11-13. In other circumstances (perhaps an organization with a longer track record) I might consider 70% donor overlap sufficient to merit further inquiry.

Statement For The Record By Commission David M. Mason in MUR 5343 (Democratic Senate Majority Fund).

Complainant also cites to MUR 5367 (Issa) for the proposition that the "provision of 'seed money' to [a] ballot initiative committee meant that [a] Member [of Congress] had financed that entity." Complainant's description of the First General Counsel's Report is misleading. The First General Counsel's Report found that "[t]he available information indicates that Rescue California was established, financed, and maintained by Rep. Issa because he provided the committee with more than 60% of its total funds, and with all of its 'seed money,'" and recommended that the Commission find reason to believe. First General Counsel's Report in MUR 5637 (Issa) at 3-4. The Commission voted in favor of this recommendation, but ultimately voted to take no further action and close the file, and in the process, did not approve any formal findings with respect to "establish, finance, maintain, or control." The First General Counsel's Report, which consists solely of a reason to believe recommendation, has no precedential value.

Whether the Report qualifies as precedent or not, the findings with respect to whether Representative Issa "established, financed, maintained, or controlled" the ballot committee did not rest solely on the matter of funding. Rather, the Office of General Counsel considered the factors set forth at 11 C.F.R. § 300.2(c)(2) and found that "Rep. Issa had an active and significant role in the formation of Rescue California," in addition to "provid[ing] funds in a significant amount" and "caus[ing] and arrang[ing] funds in a significant amount to be provided to Rescue California." First General Counsel's Report in MUR 5637 (Issa) at 9-12; *see also id.* at 5 (newspaper accounts described Issa as "seeking to commandeer the struggling drive," "bankroll[ing] the campaign," and "tak[ing] control of the recall organization"). The General Counsel's recommendations were also based on his conclusion that "Rep. Issa does not appear to deny that he financed and maintained Rescue California." *Id.* at 10.

In addition, the amount of funding at issue in MUR 5367 was significantly larger than the $10,000 at issue in the present matter. According to the First General Counsel's Report, "Rep. Issa has donated or caused to be donated $1,845,000, a facially significant amount, to Rescue California both through Greene Properties and in his own name." Moreover, "Rep. Issa's role in providing Rescue California with its seed money, infusing the committee with needed cash throughout the ballot qualification period, and continuing to fund the committee even after the recall measure qualified for the ballot, provides strong basis from which to conclude that he established, financed, and maintained Rescue California." First General Counsel's Report in MUR 5637 (Issa) at 12. The two scenarios – a one-time $10,000 contribution that was never used to fund "programmatic activities" versus an ongoing "infusion" of a total of $1,845,000 that enabled the ballot committee to operate and gather signatures in connection with a matter in which Rep. Issa had a direct interest – are simply not comparable.

In sum, it is readily apparent that at the time Advisory Opinion 2006-04 was issued, the Commission had never before approached the question of whether one entity established, financed, maintained, or controlled another as it did in the *Tancredo* matter.

b. Post-*Tancredo* Enforcement Matters: MURs 5943 and 6062

Following the issuance of Advisory Opinion 2006-04, the Commission appears to have ignored that Advisory Opinion in at least two enforcement matters. In MUR 5943 (Giuliani), the Commission voted 6-0 to accept the General Counsel's recommendations, which included a finding that "there is no evidence that the Giuliani Committee established, financed, maintained, or controlled TIA such that its activities would be imputed to Giuliani." First General Counsel's Report in MUR 5943 at 12. There is no reference whatsoever to Advisory Opinion 2006-04, and instead, the First General Counsel's Report accurately notes that:

> To determine whether a Federal candidate or officeholder directly or indirectly established, financed, maintained or controlled another entity, the Commission applies the ten factors set forth at 11 C.F.R. § 300.2(c)(2)(i) through (x), as well as any other relevant factors, in the context of the overall relationship between the Federal candidate or officeholder and the entity.

First General Counsel's Report in MUR 5943 at 12-13. The Report reviews the relevant factors in terms of the matter at issue:

> [A]n analysis of the ten factors indicates that the Giuliani Committee did not establish, finance, maintain or control TIA. The available information, including the sworn affidavit of TIA's sole and primary officer, establishes that neither

> Rudy Giuliani nor the Giuliani Committee had a role in the formation of TIA; owns any interest in TIA; or has ever directed or participated in, had the authority or ability to direct or participate in, activities or governance of TIA. . . . Furthermore, it appears that TIA and the Giuliani Committee share no overlapping officers or employees, and do not have similar patterns of receipts or disbursements. . . . .As discussed in greater detail above, it also does not appear that the Giuliani Committee caused or arranged for funds in a significant amount to be provided to TIA.

See id. at 13-14. This explanation of the applicable law and its application was also included in the Factual and Legal Analysis.

In MUR 6062 (Harry Truman Fund), the Office of General Counsel concluded that "there is reason to investigate whether Harry Truman Fund is directly or indirectly established, financed, maintained, or controlled by the Washington House Democratic Campaign Committee...." *See* First General Counsel's Report in MUR 6062 at 13. This conclusion was based on an analysis of known facts in light of the factors set forth at 11 C.F.R. § 300.2(c). The First General Counsel's Report noted "overlapping officers," "similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity," a "substantial financial relationship" in the form of $188,000 reimbursed during 2008 for rent and salary, as well as "a more intrinsic partnering" and a "close financial connection between the two organizations." *Id.* at 10-12. There is no reference in the First General Counsel's Report to Advisory Opinion 2006-04. Ultimately, however, a Commission vote to approve the Office of General Counsel's report and recommendations failed 2-3.

4. Conclusions That Can Be Drawn From Commission Precedent

As noted above, Commission precedent – with the exception of Tancredo – is faithful to the Commission's regulation at 11 C.F.R. § 300.2(c). None of the enforcement matters reviewed above contemplates an amount as small as $10,000 as a "significant amount" for purposes of the applicable regulation. Finally, based on our review of Commission precedent, it appears that a finding that Respondents "established, financed, maintained, or controlled" GOAL WestPAC would represent the first instance in which the Commission concluded that one entity may "establish, finance, maintain, or control" another entity entirely unintentionally and without any knowledge that it was doing so.

II. Respondents Did Not Violate 2 U.S.C. § 441i(e)

Complainant asserts that Respondents violated U.S.C. § 441i(e)(1)(A) because GOAL WestPAC accepted a legal contribution of $5,000 from a corporation. Under the Act, an entity

that is "directly or indirectly established, financed, maintained, or controlled" by a Federal candidate or officeholder (or agent thereof) "shall not . . . solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office . . . unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. 441i(e)(1)(A).

As explained above, Respondents did not directly or indirectly establish, finance, maintain, or control GOAL WestPAC, and in turn, Respondents did not violate the non-federal funds restriction set forth at 2 U.S.C. 441i(e)(1)(A).

Conclusion

Complainant's allegations that Respondents violated 2 U.S.C. § 441i(e) are incorrect. For the reasons set forth above, the Commission should find no reason to believe a violation occurred and dismiss this Complaint.

Sincerely,

Jason Torchinsky
Michael Bayes
Lauren Battey
Counsel for Respondents People for Pearce,
James Francis, in his capacity as Treasurer, and
Representative Stevan E. Pearce

Attachment

STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each Respondent
FEC Fax (202) 219-3923

MUR #: 6753

Name of Counsel: Chris K. Gober
Karen Blackistone

Firm: Gober Hilgers PLLC

Address: 2101 Cedar Springs Road, Suite 1050
Dallas, TX 75201

Telephone: (214) 842-6829

Fax: (877) 437-5755

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

[illegible] [signature] [illegible]
Date Respondent Signature Title

Respondent's Name: ~~Phillip C. Pearce, Treasurer for~~ GOAL WestPAC

Address: 3718 Bridle Trails Court
College Station, TX 77845

Home Telephone:

Business Telephone: (979) 690-8499

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.